IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2149 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T CORPN

Versus

KASAMBHAI ABHRAMBHAI LOTARY

Appearance:

1. Special Civil Application No. 2149 of 2000

MRS VASAVDATTA BHATT for Petitioner No. 1

MS MEGHA JANI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/04/2002

ORAL JUDGEMENT

Heard learned advocate Mrs.Vasavadatta Bhatt appearing on behalf of the petitioner Corporation and Ms.Megha Jani, learned advocate for respondent workman.

The petitioner Corporation has challenged the

order passed by the Labour Court, Amreli in Recovery Application No.11/1989 [Rajkot] [New No. 89 / 1993 Amreli] dated 7th October, 1999 wherein the labour Court, Amreli has granted benefits of two years backwages while setting aside the retirement order dated 30th September, 1987.

This Court has issued RULE and also granted ad-interim relief in terms of para-7[B] of the prayer clause vide order dated 29th Mach, 2000.

Learned advocate Mrs.Bhatt appearing for petitioner Corporation has submitted that the labour court has committed gross error in deciding the legality and validity of the retirement order dated 30th September, 1987 and set aside the same while granting two years backwages to the respondent workman. Mrs.Bhatt, learned advocate has also submitted that the labour court is having very limited jurisdiction under Section 33-C[2] of the I.D.Act, 1947 to direct the other side to pay due amount or whatever amount based on pre existing right, otherwise, the labour court is having no jurisdiction to pass order granting any benefits in favour of the respondent. She has also submitted that case of the respondent workman was that he was working in Savarkundala Sahakari Transport Society and from said society, the workman was absorbed by the Corporation and as per the Resolution and GSO issued by the Corporation, age of retirement was 60 years but illegally the respondent workman was retired by the Corporation on 30th September, 1987. The dispute was raised by the petitioner Corporation to the effect that the respondent workman was not absorbed from the Mandali and he was appointed as fresh employee of the petitioner Corporation and therefore he is not entitled to benefits of retirement age of superannuation of 60 years. Said dispute has been examined by the labour court while exercising the powers under Section 33-C[2] of the I.D.Act and ultimately, the labour court has set aside the order of retirement dated 30th September, 1987. Therefore, she submits that such dispute could not have adjudicated by the labour court while exercising the powers under Section 33-C[2] of the I.D.Act. Such powers with the labour court are conferred under Section 10[1] of the I.D.Act, 1947 and therefore, it is basic error committed by the labour court wherein, interference of this Court is required. Learned advocate Mrs.Bhatt has also relied on a decision of this Court in case of GSRTC vs. Bhanabhai B. Patel reported in 2000 [2] GLR 1358.

Learned advocate Ms.Megha Jani appearing on

behalf of the respondent workman has submitted that the respondent workman was absorbed by the corporation and therefore, according to the conditions of service, all the employees those who have been absorbed fr om private operators, for them, 60 year is fixed as age of superannuation. Therefore, she submits that it was pre existing right of the respondent workman, for that, Corporation has denied the same and hence, Recovery was filed by the respondent workman. T he labour court has rightly examined the issue and granted relief in favour of the respondent workman and therefore, no error has been committed by the labour court while granting relief in favour of the respondent workman and hence, no interference of this Court is called for in this matter , which requires to be rejected.

I have considered submissions of the learned advocates for the parties. It is disputed between the parties that whether the workman was absorbed from the private operator or not. On the contrary, the corporation has raised serious objection against claim of the respondent workman and before the labour court it was contended that the workman was appointed as fresh employee of the corporation. Therefore, he was not entitled to any benefit of 60 year superannuation age. This question has been examined by this Court in case of GSRTC v. Bhanabhai B. Patel which is reported in 2000 [2] GLR pg.1358. The relevant observations made in para 5 to 7 are referred as under :-

"5. After considering the submissions made from both the sides, according to my view, the law is quite settled that in a recovery proceedings, the labour Court has no power or authority to decide or adjudicate any dispute between the parties while exercising the powers under Sec. 33[C][2] of the I.D.Act. Before the Labour Court, the workman must prove pre-existing right for getting due amounts from the employer. After considering the award in question, the labour court has gone into the merits of the matter and has come tot he conclusion that the respondent is entitled to remain and continue in service of the petitioner Corporation upto the age of sixty years and, based on such conclusion, the labour court has set aside the order passed by the petitioner Corporation. Said exercise of the labour court is without jurisdiction and the same cannot be done by the labour court while exercising the powers under Sec.33[C][2] of the I.D.Act.

6. The law which has been decided by the Hon'ble Apex Court in case of Municipal Corporation of Delhi v. Ganesh Razak, reported in 1995 [1] LLJ 395 wherein it was held that this decision itself indicates that the power of labour court under Section 33[C][2] extends to interpretation of the award or settlement on which the workmen's right rests like executing Court's power to interpret the decision for the purpose of execution where the basis of the claim is referable to the award or settlement but it does not extend to determine a dispute or entitlement or the basis of the claim, if, there be no prior adjudication or recognition of the same by the employer. In paragraph 12 of the said judgment, it has been further held that the labour court has no jurisdiction to first decide the entitlement of the workmen and then to proceed to compute the benefits so adjudicated on that basis in exercise of its powers under Section 33[C][2] of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and, thereafter, for the purpose of implementation, execution or enforcement thereof, the Labour Court has power under Section 33[C][2] like that of executing Court's power to interpret decree for the purpose of its execution. In course of such exercise, the Labour Court may interpret the basis of the claim made by the workman. However, it has no power or jurisdiction to consider and adjudicate whether the workman is entitled to such benefit. Similarly, recently, in case of Tara & Ors. v. Director, Social Welfare & Ors., reported in 1998 [2] LLJ 632, the case of Municipal Corporation, Delhi [supra] has been considered. Recently, this Court has also considered the case of Municipal Corporation, Delhi [supra] in the decision reported in 1998 [2] GLR 984 [Naranji Peraji Transport Co. v. Ramnikbhai B. Waghela].

7. In view of these facts, the view taken by the Labour Court in deciding the status of the respondent being an employee of private operator or not and whether he is entitled to remain in service upto the age of 60 years cannot be permitted under Section 33[C][2] of the Act and, therefore, according to my opinion, the Labour Court has erred in law in deciding the question

and also in adjudicating the process while determining the question whether the respondent is entitled to the benefit of remaining in service upto the age of sixty years being an employee of the private transport operator. The Labour Court ought not to have adjudicated the entitled of the respondent in the proceedings under Section 33[C][2] of the Act and, therefore, the Labour Court has committed gross error which is apparent on the face of the record calling for interference of this Court in exercise of the powers under Art.226 and / or 227 of the Constitution of India."

In view of above observations made by this Court deciding identical question which has been involved in present petition and considering the provisions of Section 33-C[2] of the I.D.Act, in view of this Court, the labour court is not having any jurisdiction to decide or adjudicate legality and validity of the order passed by the employer. The employee is entitled to file recovery application and claim benefit, if that benefit is based upon pre existing right of the concerned employee. If concerned employee fails to prove pre existing right, then the labour court has no any jurisdiction to decide such dispute which has been raised by the employer. There is vast difference between the powers under Section 33-C[2] and Section 10[1] of the I.D. Act, 1947. The labour court, Amreli has not considered this aspect and proceeded with the matter as if the Reference has been made to the labour court. Ulimately, after perusing the entire award and considering the evidence led by the parties, the labour court has come to the conclusion that the order passed by the Corporation retiring the respondent workman on 30th September, 1987 is illegal and invalid and result thereof, benefit has been granted. Naturally, there was no scope for the labour court to examine or adjudicate or to decide the legality and validity of the order of retirement and therefore, the labour court has committed error in deciding the dispute between the parties beyond the scope and jurisdiction while exercising the powers under Section 33-C [2] of the I.D.Act, 1947. Therefore, according to my opinion, the order passed by the labour court on 7th October, 1999 in Recovery Application No.11/89 - New Number 89 / 93 requires to be quashed and set aside. Accordingly, the order passed by the labour court, Amreli in Recovery Application No.89 / 1993 dated 7th October, 1999 is hereby quashed and set aside.

Learned advocate Ms.Jani for respondent workman

submits that the labour court is having jurisdiction to examine the validity and legality of the retirement order then, it is open to the workman to raise industrial dispute challenging the retirement order passed by the Corporation and therefore, sone suitable directions may be issued on the concerned authority to expedite the Reference. Considering request of the learned advocate Ms.Jani, it is observed that it is open to the respondent workman to raise industrial dispute by the workman concerned challenging the retirement order and in such eventuality, it is directed to the conciliation officer concerned that on filing such dispute, conciliation proceedings may be complied within six weeks from the date of raising such dispute and thereafter, to pass appropriate order referring the mater to the concerned authority. It is also observed that as and when the appropriate authority receives papers from conciliation officer, it is directed to the authority concerned to expedite the reference while exercising the powers under Section 12[5] and 10[1] of the Industrial Disputes Act, 1947. However, it is made clear that the observations made by this Court in the present order will not come in the way of the respondent workman while rasing the Industrial Dispute before the concerned authority and the authority under the I.D.Act will deal and pass the appropriate orders in accordance with law.

Rule is made absolute accordingly. No order as to costs. Direct Service is permitted to the respondent.

Date : 10-4-2002 [H.K.Rathod, J.]

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